



**Long Island**  
3 Dakota Drive, Suite 300  
Lake Success, NY 11042  
516.328.2300 | P

Long Island · Brooklyn · White Plains · Rochester · Albany

Seth L. Berman, Esq.  
Partner/Director Intellectual Property and Entertainment Dept.  
Email: sberman@abramslaw.com

November 5, 2024

The letter of November 5 (ECF 75) will be deemed a motion to compel. Defendants shall respond by November 12, 2024. SO ORDERED.

Dated: 11/6/2024

**VIA ECF**

Hon. P. Kevin Castel  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

A handwritten signature in black ink, appearing to read "P. Kevin Castel".

P. Kevin Castel  
United States District Judge

Re: Yellowcake, Inc. v. Discos Aries LLC, et al., Docket No 1:23-cv-10376-PKC

Dear Judge Castel:

This firm represents the Plaintiff Yellowcake, Inc ("Yellowcake") in the above-referenced matter. We submit this letter, pursuant to Rule 3(B) of this Court's Individual Rules of Practice and Local Rule 37.2, to request a pre-motion discovery conference. As more fully set forth below, Defendants Discos Aries LLC, Discos Linda LLC, D&O Records and Abel Orozco (collectively, the "Discos Defendants") have repeatedly failed to respond to Yellowcake's Request for Documents. For that reason, Plaintiff requests leave to move pursuant to F.R.C.P. 37, to compel the Discos Defendants to produce documents responsive to Yellowcake's request.

As background, this is a copyright infringement action commenced by Yellowcake on November 28, 2023. Yellowcake served requests for the production of documents on the Discos Defendants on June 4, 2024. A copy of the requests are annexed hereto as Exhibit "A".

On July 19, 2024, the Discos Defendants served a "response" merely promising to produce documents in the future. *See*, the "Responses" annexed hereto as Exhibit "B". By the end of September, the Discos Defendants still had not produced any responsive documents.

On September 30, 2024, the undersigned contacted opposing counsel demanding that the defendants substantively respond to Yellowcake's Request for Documents and produce documents.

On October 19, 2024, counsel for the Discos Defendants stated by email that Yellowcake would receive documents by October 28, 2024. When Yellowcake still did not receive a response by that date, the undersigned followed up by email on October 30, 2024. In my email, I advised

A | F

Page 2

the Discos Defendants' counsel that Yellowcake would seek judicial intervention if the Discos Defendants did not respond by November 1, 2024. Again, the Discos Defendants failed to produce any responsive documents by November 1, 2024. On November 3, 2024, opposing counsel sent yet another email stating that their client would be dropping off documents the following day. However, Yellowcake still have not received documents more than five months after their discovery demands were served. On the other hand, Yellowcake served substantive responses to Defendant ONErpm's Request for Documents on September 18, 2024.

Federal Rule of Civil Procedures ("F.R.C.P.") 37(a)(3)(B)(iv) permits a seeking discovery to move for an order compelling production of documents where "a party fails to produce documents or fails to respond that inspection will be permitted." Such a motion should be granted where a party has failed to comply with their discovery obligations and the movant demonstrates their good faith efforts to resolve the dispute prior to seeking relief from the court. *See U.S. Bancorp Equipment Fin., Inc. v. Babylon Transit, Inc.*, 270 F.R.D. 136, 140-41 (E.D.N.Y. 2010). That is certainly the case here. Yellowcake has given the Discos Defendants numerous opportunities to satisfy their obligations. Counsel for the Discos Defendants has acknowledged those obligations by repeatedly assuring that documents would be forthcoming. Nevertheless, the Discos Defendants have failed to comply for months. Yellowcake now has no choice but to ask the Court to intervene.

Accordingly, Yellowcake respectfully requests that the Court schedule a pre-motion discovery conference. Pursuant to F.R.C.P. 37(a)(1), I certify that Yellowcake has conferred in good faith with counsel for the Discos Defendants in an effort to resolve this matter without court action.

Respectfully submitted,



Seth Berman

cc: All counsel of record via ECF